

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

John Patrick Morgart,
Plaintiff,
vs.
Allscripts Healthcare Solutions, Inc. and
Allscripts Healthcare, LLC,
Defendant.

Civil Action No. 5:18-cv-524

NOTICE OF REMOVAL

Allscripts Healthcare Solutions, Inc. and Allscripts Healthcare, LLC (hereinafter collectively referred to as “Allscripts” or “Defendants”) petition this Court for removal of the above-entitled action to the United States District Court for the Eastern District of North Carolina, Western Division, from the District Court Division of Johnston County, North Carolina, and for its Notice of Removal states:

1. On September 14, 2017, John Patrick Morgart (herein referred to as “Morgart” or “Plaintiff”) commenced an action in the District Court Division of Johnston County, North Carolina, entitled *John Patrick Morgart v. Allscripts Healthcare Solutions, Inc. and Allscripts Healthcare, LLC*; No. 17-CVD-2862 (the “State Court Proceeding”), by filing Plaintiff’s Complaint. On or about November 21, 2017, Defendants were served with a copy of the Plaintiff’s Complaint. On or about December 20, 2017, Defendants timely served and filed their Answer.

2. While not clear from the face of Plaintiff’s Complaint, the above-entitled action appeared to constitute a claim by Plaintiff against Defendants alleging breach of a contract for which Plaintiff alleges he is entitled to money damages. Despite asking Plaintiff for clarification

as to the nature of his claims, Defendants did not learn of the precise nature of his claims until his deposition. At Plaintiff's deposition on October 4, 2018,¹ Defendants first learned that Plaintiff sought payment pursuant to Allscripts Healthcare Solutions, Inc. Severance Plan, which is part of an "employee welfare benefit plan" as defined under the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.* ("ERISA") at § 1002(1) & (3). Accordingly, Defendants timely file this notice of removal pursuant to 28 U.S.C. § 1446(b)(3).

3. As Plaintiff's Complaint asserts a claim for benefits arising under ERISA, this Court has jurisdiction over the issues presented therein pursuant to 28 U.S.C. § 1331 (federal question) and 29 U.S.C. § 1132(e)(1) (ERISA). This matter may be removed pursuant to § 1441(a), in that Plaintiff's claims against Defendants arise under and are governed by ERISA, which completely preempts any state law claims alleged in Plaintiff's Complaint and provides the exclusive federal remedy for resolution of claims by employee benefit plan participants, beneficiaries, or their representatives to recover benefits from such plans. 29 U.S.C. §§ 1132(a) and (e); *see Aetna Health Inc. v. Davila*, 542 U.S. 200 (2004); *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133 (1990); *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41 (1987); and *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987).

4. Venue is proper in the United States District Court for the Eastern District of North Carolina, Western Division as this case was originally filed in Johnston County, District Court Division, North Carolina, which lies within this District. *See* 28 U.S.C. § 1446(a); 28 U.S.C. § 133(a).

5. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 5.3(a), the following documents are included and attached hereto this Notice:

(a) Civil Cover Sheet;

¹ The transcript of Plaintiff's deposition was electronically delivered on October 12, 2018.

- (b) Supplemental Removal Cover Sheet;
- (c) True and accurate copies of all process, pleadings, orders, and other documents (excluding discovery) filed in the State Court Proceeding, each attached as a separately and distinctly titled Exhibit: **Exhibit A** - Summons and Complaint; **Exhibit B** – Notice of Enlargement of Time; **Exhibit C** – Defendants' Answer; **Exhibit D** – Defendants' Motion for Judgment on the Pleadings; **Exhibit E** – Motion and Order Continuing Trial.

6. A true and complete copy of this Notice of Removal has been served by overnight delivery upon the Clerk of the General Court of Justice of Johnston County, North Carolina for filing in accordance with 28 U.S.C. § 1446(d). A copy of the Notice of Filing of Notice of Removal is attached hereto as **Exhibit F**, the original of which is being filed with the General Court of Justice of Johnston County, District Court Division, North Carolina Civil Clerk. This Notice of Removal and a Notice of Filing of Notice of Removal have also been served via First Class U.S. mail upon Plaintiff.

WHEREFORE, Defendants Allscripts Healthcare Solutions, Inc. and Allscripts Healthcare, LLC respectfully pray that the above-entitled action now pending in the General Court of Justice, District Court Division of Johnston County, North Carolina, be removed to this Court.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Dated: November 1, 2018

By: /s/ Elizabeth H. Pratt

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Attorneys for Defendants
Allscripts Healthcare Soulutions, Inc. and
Allscripts Healthcare, LLC

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2018, I electronically filed the foregoing **DEFENDANT'S NOTICE OF REMOVAL** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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/s/ Elizabeth H. Pratt
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